

CITY of ALBUQUERQUE  
SIXTEENTH COUNCIL

COUNCIL BILL NO. O-04-14 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY:

ORDINANCE

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Amending Chapter 9, Article 4, Part 1 ROA 1994, The Police Oversight Ordinance; Increasing The Number Of Commissioners To Nine; Increasing The Representation Of Commissioners To Include A Representative From Each City Council District; Changing The Minimum Qualifications Of Commissioners; Clarifying Procedures For Findings On Investigations; Changing The Term Of The Independent Review Officer; Creating A Hearing Process For Non-Concurrence Issues; And Amending The Appeal Process.

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BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. Section 9-4-1-4 ROA 1994 is amended as follows:

“ There is hereby created a Police Oversight Commission (POC) to provide oversight of the Albuquerque Police Department and oversee all citizen complaints as follows:

(A) The POC shall be composed of [-seven-] [+nine+] members who broadly represent the diversity of this community, [+ and+] who reside within the City of Albuquerque [+.+] [ - and have not been employed in law enforcement for at least two years.-] [+There shall be one member of the Police Oversight Commission representing each City Council District. This policy shall be implemented as vacancies occur subsequent to the adoption of this ordinance with the exception of Commissioners currently serving on the POC who may be reappointed for a second term by the Mayor regardless of the Council District they represent. ] [ - Each member shall be appointed by the Mayor subject to the advice and consent of the City Council as follows:

(1) Each City Councillor will nominate an individual and submit their name to the Mayor who will appoint five members from the nine nominations.

(2) The Mayor shall appoint two at-large members.

(B) Each of the individuals nominated by City Councillors and the two at-large members appointed by the Mayor shall have, at a minimum, the following qualifications:

(1) Have not been employed in law enforcement for two years prior to appointment; and

(2) Problem solving and conflict resolution skills; and

(3) Attend a yearly four-hour training session to be conducted by a civil rights attorney; and

(4) A willingness to commit the necessary time each month for POC hearings and other business.

(C) The term of each member of the POC shall be for two years; provided, however, that of the seven members first appointed after the effective date of the ordinance, a drawing will be held at the first meeting to determine who serves for two years and three years; four shall serve for three years, and three shall serve for two years. No person shall serve more than

two full terms. Serving any portion of an unexpired term shall not be counted as service of one term.

(D) That any vacancy occurring during the term of any member shall be filled by a nomination by the Mayor with the advice and consent of the City Council. -]

[+ (B) The following are the minimum qualifications for members of the Police Oversight Commission:

- (1) Have not been employed by law enforcement for two years prior to appointment; and
- (2) Problem solving and conflict resolution skills; and
- (3) Attend a yearly four-hour civil rights training session to be conducted by a civil rights attorney or advocacy group; and
- (4) A willingness to commit the necessary time each month for POC hearings and a commitment to prepare and read all materials distributed prior to the monthly POC meetings; and
- (5) Participate in a minimum of two ride-a-longs every year with APD officers; and
- (6) Attend a yearly Firearms Training Simulator (FATS) training at the APD Police Academy. +]

[+ (C) When a vacancy on the POC occurs, the Councillor representing the District in which the vacating member of the POC resides, or another Councillor representing another District which is unrepresented on the POC, shall nominate two members to the POC who reside in his or her respective Council District. The Mayor shall then appoint one of these recommended members to the POC with the advice and consent of the Council.

(D) The terms of the members of the POC shall be staggered so that no more than five of the members are eligible for reappointment or replacement each year.+]

(E) The appointment of any member of the POC who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term.

(F) That the POC shall elect one of its members as the Chairperson and one as Vice-Chairperson, who shall each hold office for one year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. [+Officers shall be elected in the month of March of each calendar year. +] [-Officers shall be elected no later than the second meeting of the Commission following its appointment. -]

(G) The POC may appoint such subcommittees as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through 9-4-1-14, provided that, membership on such subcommittees shall be limited to the Commission members.

(H) That the POC and its investigative arm, the IRO, shall be housed in a [-separate facility that-] [+facility that is separate from any police presence and +] is located outside of the Albuquerque/Bernalillo Government Center, the Police Department and/or all of the police substations [+or any location where police officers are housed+].

(I) That the City Council and the Mayor's Office shall jointly provide staff assistance at all regularly scheduled meetings and at special meetings held pursuant to signed petitions. All other staff support shall be provided by the IRO and/or the Independent Review Office staff.  
§ 9-4-1-5 POWERS AND DUTIES OF THE COMMISSION.

The Police Oversight Commission shall have the following powers and duties:

(A) To promote a spirit of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence.

(B) To oversee the full investigation and/or mediation of all citizen complaints; audit and monitor all investigations and/or police shootings under investigation by APD's Internal Affairs; however, the POC will not investigate any complaints other than those filed by citizens. All complaints filed by police officers will be investigated by Internal Affairs.

(C) To gain the cooperation of APD and solicit public input by holding regularly scheduled meetings.

(D) To review all work of the IRO with respect to quality, thoroughness, and impartiality of investigations.

(E) Submit a quarterly report to the Mayor and City Council according to § 9-4-1-10 herein.

(F) To submit all findings to the Chief of Police. The Chief will have final disciplinary authority.

(G) To engage in a long-term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.

(H) To conduct regularly scheduled public meetings with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney, and that complies with the New Mexico Open Meetings Law. Each POC meeting will begin with public comments and only the regularly scheduled monthly meetings and special meetings held pursuant to submission of petitions will be televised live on the appropriate government access channel. All other meetings of the POC will comply with the Open Meetings Law and shall be videotaped and aired on the appropriate government access channel; however, there is no requirement for providing live television coverage.

(I) To recommend to the Mayor and City Council during the city's budget process, their proposed budget for provision of such staff as is necessary to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including the funding for the Independent Review Office, staff, and all necessary operating expenses. The Mayor shall propose the annual budget to the City Council in the annual budget message.

(J) To recommend three candidates to the Mayor for consideration as the Independent Review Officer (IRO), and oversee the continuing performance of this individual once selected by the City Council.

#### § 9-4-1-6 INDEPENDENT REVIEW OFFICE.

(A) The Independent Review Office is hereby established and shall be directed by an Independent Review Officer (IRO).

(B) The IRO shall be given autonomy and shall perform all duties under the direction of the POC. There will be no attorney-client privilege between the IRO and the city.

(C) The Independent Review Office will receive all complaints and claims directed against the Albuquerque Police Department and any of its officers. The IRO will review such complaints and assign them for investigation to either the Albuquerque Police Department for an internal administrative investigation or to an independent investigator. The IRO will oversee, monitor and review all such investigations and make findings for each. [+All+] [- F -] [+f+] findings relating to citizen complaints and police shootings will be forwarded to the POC. The findings for all other cases [+ , including internal investigations conducted by the Internal Affairs Unit, +] will be forwarded only to the Chief of Police. In any instance, the Chief of Police will have the sole authority for discipline. For all investigations, the IRO will

make recommendations and give advice regarding Departmental policies and procedures to the POC, City Council, and the Mayor as the IRO deems advisable, provided as follows:

(1) That investigation of all [+citizen+] complaints filed with the Independent Review Office shall begin immediately after complaints are filed and proceed as expeditiously as possible; and

(2) That [-such -] [+ all citizen +] complaints filed with other offices within the city authorized to accept citizen complaints, including the Police Department, shall be referred to the IRO for investigation; and

(3) That at the discretion of the IRO an impartial system of mediation may be considered appropriate for certain complaints. If all parties involved reach an agreement, the mediation is considered successful and no investigation will occur; and

(4) To monitor all claims of excessive force and police shootings. No APD related settlements in excess of \$25,000 shall be made for claims without the knowledge of the IRO. The IRO shall be an ex-officio member of the Claims Review Board; and

(5) That all investigations shall be thorough, objective, fair, impartial, and free from political influence; and

(6) That all information necessary to satisfy the POC's quarterly reporting requirements in § 9-4-1-10 be maintained and compiled [-.-] [+; and+]

[+ (7) The process for finalizing findings on police shooting cases shall be the same as the process for finalizing findings on citizen police complaints. +]

(D) The IRO shall have access to any Police Department information or documents that are relevant to a citizen's complaint, or to an issue which is ongoing at the Independent Review Office or the POC; and

(E) The IRO shall [+ have a policy review function, have the authority to conduct audits, and +] make recommendations to [+ the POC and +] APD on specific training, changes in policy or duty manuals. [+ APD will respond, in writing, to all recommendations from the IRO or POC within 60 days. +] Follow up and monitor all recommendations to verify their adoption and implementation; and

(F) The Independent Review Office shall provide staff assistance for the POC and coordinate and provide technical support for all scheduled Police Oversight Commission meetings, publicize all findings and reports, recommendations, and/or suggested policy changes; and

(G) Play an active public role in the community, and whenever possible, provide appropriate outreach to the community. Publicize the citizen complaint process, and identify locations within the community that are suitable for citizens to file complaints in a non-police environment; and

(H) Neither the City Council nor any of its members, nor the Mayor shall in any manner dictate the appointment or removal of any such employee of the Independent Review Office.  
§ 9-4-1-7 INDEPENDENT REVIEW OFFICER.

(A) Qualifications for the position of Independent Review Officer shall be determined by the Police Oversight Commission. The qualifications minimally include the requirement of a law degree and experience in criminal investigations.

(B) The position of IRO will be a full-time contractual city employee to be selected as follows:

(1) A candidate search will be undertaken by the POC, who will screen, interview, and select three candidates to be considered by the Mayor; and

(2) The Mayor will select one of the three candidates and forward his recommendations to

the City Council; and

(3) The City Council may accept or reject the Mayor's nominee.

(4) In the event the City Council rejects the nominee, the Mayor shall submit his second recommendation from the names submitted by the POC, the City Council may accept or reject the Mayor's nominee.

(5) In the event that the City Council rejects the second nominee, the process shall begin with a second candidate search by the POC.

(C) The IRO will be provided the necessary professional and/or clerical employees for the Office, and shall prescribe the duties of these staff members after consultation with the members of the POC. Such professional and clerical employees will be classified city employees.

(D) The IRO will report directly to the POC and act as Lead Investigator and Manager of the Office; will supervise all investigations of citizen complaints against police officers, will audit all investigations of complaints and/or police shootings, will recommend and participate in mediation of certain complaints, and will supervise all Independent Review Office staff.

[+ (E) The term of the IRO shall be for two years, commencing immediately upon approval by the City Council. The Mayor, with the approval of the City Council, shall have the option to renew or extend the contract with the IRO for additional two-year periods. Negotiations to renew or extend the contract shall be completed three months prior to the contract expiring. Should the contract not be renewed or extended, the IRO may continue to serve in the same capacity until a new IRO is selected and approved by the City Council. If the IRO or the Mayor chooses not to renew or extend the contract, the POC shall be immediately notified. The POC will then immediately begin a candidate search, as described in §9-4-1-7 (B)(1). If for some unforeseen reason there is a period of time during which there is no IRO, the Mayor may appoint a temporary IRO, with the consent and approval of the City Council. A temporary IRO shall only serve in that capacity for a period not to exceed 6 months. +]

#### § 9-4-1-8 CITIZEN COMPLAINT PROCEDURES.

(A) Any person claiming to be aggrieved by actions of the Police may file a written complaint against the department or any of its officers. The [-Mayor-] [+POC+] shall submit rules and regulations governing citizen complaint procedures to the [+Mayor and+] City Council for approval, including rules and regulations relative to time limits, notice and other measures to insure impartial review of citizens' complaints against members of the police department.

(B) The Mayor shall designate civilian city staff to receive written [+ citizen+] complaints at various locations throughout the city. The Police Department may also receive written complaints. Such complaints shall be filed with the civilian city staff no later than 90 days after the action complained of. The party who receives the complaint shall transmit [- any -] [+ all citizen +] complaint[+s+] for further investigation to the IRO. If a [+citizen+] complaint is determined to not merit further investigation, the complainant shall be notified of that determination by certified mail.

(C) After the investigation [-and a review of the findings of the POC-] [+ is completed +], [+ the IRO and +] the Chief [+ , or his designee, +] shall consider the investigation and all other relevant and material evidence offered by the person investigated. [+ The IRO and Chief may confer and discuss the investigation and findings. The IRO shall then submit his findings and public record letter to the POC for review and approval. The

public record letter to the citizen will only be sent after approval by the POC. +]

(D) If the Chief, or his designee, and the IRO disagree on the IRO's findings, the POC will receive the complaint to review at the next regularly scheduled meeting. The POC will treat the complaint as a Non-Concurrence Issue and after conducting a hearing can keep, modify, or change the original findings and/or recommendations of the IRO. The POC can also incorporate additional recommendations to the Chief regarding any proposed discipline or action being recommended. If the Chief does not satisfy the POC with the administration of discipline or action after the Non-Concurrence hearing, the POC may request that the Chief Administrative Officer review the Non-Concurrence Issue within 30 days of the Chief taking action upon the recommendations of the POC. The Chief Administrative Officer will review the original complaint, the findings and recommendations of the IRO and POC and the actions of the Chief and render a final recommendation, acting with the same authority and power as described in §9-4-1-9(B).

(E) When the Chief, or his designee, and the IRO agree on the findings of the POC, these findings will be considered final and cannot be changed by the Chief, or his designee, at any time without first notifying the POC, the IRO, the complainant, and the individual(s) against whom the complaint was filed, by certified mail.

(F) The findings of the IRO shall be placed in the officers' records in the same location as the Chief's findings are located. +]

[+ (G) +] The Chief shall take whatever action is necessary, including disciplinary action, to complete the disposition of the complaint. Written notice, by certified mail, of such disposition shall be given to the complainant and to the individual against whom the complaint was filed [- by certified mail-].

#### § 9-4-1-9 APPEALS.

(A) [+ A summary and+] findings of the investigation conducted pursuant to the direction of the IRO shall be forwarded to the [+ complainant and to the +] POC. [+ A copy of the IRO's public record letter shall also be forwarded to the complainant and to the POC. +] Any [- citizen -] [+person who has filed a citizen complaint and +] who is dissatisfied with the findings of the IRO may appeal that decision to the POC [+ within ten business days of receipt of the public record letter +]. The POC may upon appeal modify or change the [+findings and/or +] recommendations of the IRO and may make further recommendations to the Chief regarding the findings and/or recommendations and any discipline imposed by the Chief or proposed by the Chief. Within 20 days of receipt of the [+ appellate +] decision of the POC, the Chief shall notify the POC and the original citizen complainant of his decision in this matter [+ in writing, by certified mail. +].

(B) If any person who has filed a citizen complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with the final decision of the Chief of Police on any matter relating to his complaint, he may request that the Chief Administrative Officer review the complaint, the findings of the IRO and POC and the action of the Chief of Police by requesting such review in writing within ten [+business +] days of [+ receipt of +] the Chief's [+letter pursuant to § 9-4-1-9 (A). +] [- action upon recommendations of the POC. -] Upon completion of his review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief of Police regarding disciplinary action, to complete the disposition of the complaint. The Chief Administrative Officer shall notify in writing, by certified mail, the complainant, the individual against whom the complaint was filed, the Chief of Police and the IRO of the results of his review and any action he has taken.

#### § 9-4-1-10 REPORTS.

The POC shall be responsible for regularly informing the Mayor, the City Council, and the public by submitting quarterly reports that contain the following types of information:

- (A) Data relating to the number, kind and status of all complaints received including those complaints sent to mediation;
- (B) Discussion of issues of interest undertaken by the POC which may include suggested policy and/or procedural changes, a listing of complaints and allegations by Council District, statistical ethnicity of subject officers, statistical ethnicity of complainants, and updates on prior issues and/or recommendations;
- (C) The POC's findings and the Police Chief's issuance of discipline on those findings and the ongoing disciplinary trends of the Police Department;
- (D) Information on all public outreach initiatives undertaken by either the POC or the IRO such as speaking engagements, public safety announcements, and/or public information brochures on the oversight process.
- (E) The status of the long-term planning process identifying major problems, policy suggestions, and studies as required by Section 9-4-1-5 of this ordinance.

#### § 9-4-1-11 EVALUATION.

[-That after a period of 18 months-] [+Contingent upon funding, in the first six months of 2005 and at least every four years thereafter, +] from adoption of §§ 9-4-1-1 through 9-4-1-14, the City Council shall issue a Request for Proposal for an independent consultant to undertake a complete evaluation and analysis of the entire Police Oversight Process, and recommend any necessary changes or amendments that would appropriately improve the process.

#### § 9-4-1-12 SPECIAL MEETINGS.

On the petition of 1,000 or more citizens in the City of Albuquerque filed in the Office of the City Clerk, the Commission shall hold a special meeting for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission and shall comply with the State Open Meetings Law.

#### § 9-4-1-13 CONFIDENTIALITY.

The hearing process shall be open to the public to the extent legally possible so that it does not conflict with state or federal law. However, upon the opinion of the City Attorney and IRO, some of the details of the investigations of the IRO, or the designated independent investigator, shall become privileged and confidential. The details of investigations should not be open to the public subject to the opinion of the City Attorney and the IRO. Compelled statements given to the IRO, or the designated independent investigator, will not be made public. The IRO may summarize [+statements made and +] conclusions reached from a compelled statement for the report to the POC and the Chief [+], and in the public record letter sent to the complainant [+]. Nothing in §§ 9-4-1-1 through 9-4-1-14 shall affect the ability of APD to use a compelled statement in a disciplinary proceeding.

#### § 9-4-1-14 MANDATORY COOPERATION AGREEMENT.

The City Council believes that full participation and cooperation of all parties involved is essential to the success of the new police oversight process and its IRO, and that APD hereby agrees and understands that their full cooperation is necessary, hereby agrees to mandate that its officers provide honest and truthful responses to all questions by the IRO or the

designated independent investigator. If any officer refuses to answer the questions proposed to him or her by the IRO, or the independent investigator, he or she may be subjected to termination or disciplinary action at the discretion of the Police Chief. Compelled statements given to the IRO or the designated independent investigator, by a police officer will be used only for the IRO's investigation. The actual statement will remain confidential and will not be included in a final report or be forwarded to the POC. The IRO may summarize [+statements made and +] conclusions reached from a compelled statement for the report to the POC and the Chief [+ , and in the public record letter to the complainant +].”

Section 2. Severability Clause. If any Section, paragraph, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each Section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 3. Compilation. Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico.

Section 4. Effective Date. This ordinance shall take effect five days after publication by title and general summary.